

## REMARKS

This is intended as a full and complete response to the Office Action dated January 3, 2006, having a shortened statutory period for response set to expire on April 3, 2006. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-18 and 25 remain pending in the application and are shown above. Claims 19-24 have been cancelled. Claims 1-14 are rejected by the Examiner. Claim 1 is amended to clarify the invention. This amendment is not considered limiting and are not presented to distinguish a reference, thus, the claims as amended are entitled to a full range of equivalents if not previously amended to distinguish a reference. Reconsideration of the rejected claims is requested for reasons presented below.

### ***Claim Rejections Under 35 U.S.C. § 102***

Claims 1, 10-18, 25 are rejected under 35 U.S.C. 102(b) or (e) as being anticipated by admitted prior art.

The Examiner asserts that within the present application within paragraphs [0004, 0006] *measuring pre-etch critical dimensions of the respective elements of the etch photomasks (of the substrate of the previous batch)* would be admitted such that it would read on claim 1. Applicants respectfully disagree with the interpretation of the specification of the application. Paragraph [0006] refers to *statistically processing the results of such measurements, determining if the measurement passes the requirement, and adjusting the etch process performed on subsequent batches of the substrate.* Thus, adjusting within paragraph [0006] is done on statistically processed results of (a plurality) of measurements. The modifying as referred to in claim 1 and as even better distinguished by the introduced clarifications is not known from the prior art considered by the Examiner and may not have been conducted as claimed by the considered prior

art without the integrated measuring tool, which is also incorporated as an element in claim 1. Withdrawal of the rejection is respectfully requested.

Referring to claims 10 and 15, the Examiner asserts that the step for forming a phase shift angle of a phase shift photomask would be described in paragraph [0004] and the measuring would be taught in paragraph [0007]. In paragraph [0007], the specification also relates to statistically processing results and adjusting on subsequent batches. There is no teaching or suggestion in the prior art considered by the Examiner of measuring by an integrated measuring tool as claimed in claims 10, 15 and 25. Therefore, there is no teaching or suggestion towards the claimed invention. Withdrawal of the rejection is respectfully requested.

### ***Claim Rejections under 35 U.S.C. § 103***

Claims 2-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted prior art.

Referring to claim 2, the Examiner asserts that modifying the initial etch recipe would be obvious to one skilled in the art because that would provide a correct etch recipe right away for the next substrate. Applicants respectfully disagree with the Examiner's opinion. According to the prior art, statistically processing of the results of such measurements has been conducted and adjustment has been done on a batch-to-batch basis. In light of the prior art considered by the Examiner, the manufacturing process would have been required to wait for the statistically processing of results until a feed-back could have been provided. Throughput may be significantly deteriorated if a waiting step would be implemented in a manufacturing process. There is no teaching or suggestion in the prior art considered by the Examiner that the claimed method would be done or even that it could have been done. According to Applicants' opinion, an advantage occurring due to the invention may not be used as a basis for a rejection in hindsight. Withdrawal of the rejection is respectfully requested.

Referring to claim 3, the Examiner asserts that performing rework would be obvious because a quality control process would have been done with any type of manufacturing device. Applicants respectfully disagree with the Examiner's opinion. According to the prior art, statistically processing of the results of such measurements has been conducted and adjustment has been done on a batch-to-batch basis. In light of the prior art considered by the Examiner, the manufacturing process would have been required to wait for the statistically processing of results until a rework could have been provided. Throughput may be significantly deteriorated if a waiting step would be implemented in a manufacturing process. There is no teaching or suggestion in the prior art considered by the Examiner that the claimed method would be done or even that it could have been done. According to Applicants' opinion, an advantage occurring due to the invention may not be used as a basis for a rejection in hindsight. Withdrawal of the rejection is respectfully requested.

***Election/ Restrictions***

Claims 1-25 are subject to restriction and/or election requirement. The claims have been restricted under 35 U.S.C. as follows:

- I.      Claims 1-18, 25 drawn to a method, classified in class 257, subclass 48.
- II.     Claims 19-24, drawn to an apparatus, classified in class 156, subclass 345.1.

Applicant herewith affirms the provisional election with traverse to prosecute the invention of method claims 1-18 and 25.

***Conclusion***

The prior art considered by the Examiner does not teach, show, or suggest the invention as claimed. Having addressed all issues set out in the office action, Applicant

respectfully submits that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,



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